

those reports, and the ability to correct any mistakes since mistakes in a credit report could cost someone a loan or a job.

Today, however, television, radio, and the internet are awash in misleading advertisements for free credit reports. A cottage industry has sprung up of unscrupulous marketers who confuse or deceive consumers into buying products or services they may not need or want by tying the purchases to the offer of a so-called “free credit report.” Many of these marketers deliberately obscure the difference between the free reports to which consumers have a right under Federal law—which come with no strings attached—and the “free reports” that marketers condition on purchases of credit monitoring, credit scores, or other products.

Deceptive advertisements direct consumers to contact commercial sources unaffiliated with the government-authorized AnnualCreditReport.com. Consumers who request “free” credit reports from these sources often find they have unwittingly signed up for credit monitoring or other services they must pay for. Some of these offers include notice that they are not affiliated with the federally mandated free report, and that consumers who accept the offer will either have to pay for another product or cancel a “trial membership” within a short time to avoid being charged. These disclaimers, however, are often buried in fine print or appear in places where most consumers won’t see them. They simply are not adequate to correct the overall impression that the offer is for the free, no-strings-attached credit report available under federal law. Deceptive advertisements using free credit reports as bait are particularly destructive, because they take advantage of a consumer’s general knowledge that free credit reports are available under law, and subvert the law’s intent to protect consumers.

The FTC has received hundreds of complaints from consumers who have been confused or deceived into paying for what they thought was their free report provided by law. The Better Business Bureau reports that just one prominent advertiser of free credit reports, FreeCreditReport.com, has been the subject of more than 9,600 complaints over the last 36 months. FreeCreditReport.com requires a potential customer to provide a credit card number in order to establish an account and request a credit report. Many consumers assume this information is necessary for the company to identify the correct credit file, because why else would you have to provide a valid credit card to receive a free report? In fact, buried in the small print it is revealed that customers that request a free credit report must also opt out of a credit monitoring service or else they will be charged \$15 a month, indefinitely.

A 2007 study by Robert Mayer and Tyler Barrick of the University of Utah

for Consumer Reports WebWatch analyzed 24 websites that market free credit reports and scores and revealed them to be rife with deceptive practices. Many of the websites studied had the word “free” in the domain name; others had names similar to the FTC-mandated AnnualCreditReport.com, such as NationalCreditReport.com. Of the 58 sales pitches for credit reports or scores across the 24 websites analyzed, 41 pitches were for “free” reports or scores that in fact required purchase of a product or enrollment in a credit monitoring service. The study concluded that the “enticement of free credit reports and free credit scores is an integral part of marketing credit-related services.” Interestingly, the study also revealed that of the 24 websites analyzed, nine were owned by, or closely connected to, the nationwide bureau TransUnion, and eight were owned by or closely connected to the nationwide credit bureau Experian.

The Federal Trade Commission has sued companies engaged in such misleading practices, but the deceptive advertisements have not stopped. Since 2005, for example, Experian has paid the government more than \$1.2 million in settlements over deceptive marketing of ostensibly free credit reports through the website FreeCreditReport.com. And yet FreeCreditReport.com, through its seemingly ubiquitous advertisements, continues to deceptively peddle its product. At this very moment the Florida Attorney General’s office has an active investigation into FreeCreditReport.com for “Failure to adequately disclose negative option enrollment in credit monitoring with ‘Free’ credit report, deceptive advertising, misleading domain name, and failure to honor cancellations.”

Section 205 of the Credit CARD Act, which contains the Levin-Collins-Menendez provision, will shore up the consumer protection in the FACT Act by requiring simple, honest disclosure in advertisements for “free” credit reports. Mandatory disclosures will help ensure that consumers are given accurate information about how to obtain a free credit report with no strings attached. It is an effort to end the deceptive activities of companies that attempt to trick people into buying something that they are entitled by Federal law to receive for free.

Section 205 directs the Federal Trade Commission to issue a rule by February 2010, to require companies advertising free credit reports to disclose the availability of the government-mandated free credit report in all mediums—internet, television, radio and print. Under the statute, the rulemaking must require that all television and radio ads for free credit reports include the disclaimer that “This is not the free credit report provided for by federal law.” The rulemaking will also require that all internet advertisers of free credit reports prominently display on the advertiser’s

homepage and possibly the advertisement itself that consumers can order the free credit reports provided for by federal law from www.AnnualCreditReport.com.

Section 205 provides for FTC rulemaking to flesh out the disclosure requirements, such as what information should be provided, how it should be formatted, and where it should be displayed. This section will not achieve its purpose unless the mandated disclosure is made in a clear, prominent, and effective manner, a standard that disclosures in many current promotions do not achieve. The cleverly deemphasized disclosure currently on FreeCreditReport.com, for example, would not be sufficient.

The success of a disclosure in alleviating confusion and deception depends critically on the manner in which it is presented. Even seemingly minor differences in language or presentation can make the difference between effective and ineffective disclosures. Section 205 recognizes these challenges and the FTC’s unique ability to meet them by giving the agency the authority to implement this new disclosure requirement by rule. I encourage the FTC to use consumer testing to identify the most effective disclosures and to design separate disclosure requirements for each type of medium: television, radio, internet, and print.

Section 205 (b)(2)(B) states that, “for advertisements on the Internet,” the FTC rulemaking shall determine “whether the disclosure required under section 612(g)(1) of the Fair Credit Reporting Act (as added by this section) shall appear on the advertisement or the website on which the free credit report is made available.” I want to be perfectly clear, as the Senator who authored this provision and ensured its inclusion in the final bill, that this provision is intended to allow the FTC to require disclosure on an internet ad, on the website to which the ad is linked, on the “home” website of the company advertising “free” credit reports, or on any combination of the three. In my view, most forms of internet advertising, such as banner ads and paid search engine links promising free credit reports, should include disclosures. It will be up to the FTC to determine the nature and extent of the disclosure on each form of internet advertising.

The goal of section 205 is to eliminate consumer confusion and deception by preventing commercial promotions from posing as the Federal free annual report program, and by ensuring that consumers know how to get their truly free annual reports. Although this provision does not prohibit the marketing of “free credit reports” per se, nothing in this section is intended to limit the FTC’s authority under Section 5 of the FTC Act to prohibit unfair or deceptive practices in or affecting commerce, or its authority under the FACT Act to promulgate regulations regarding the